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Directive 11-6: Application of the Deeds Excise to Transfers of Time-Share Interests

Introduction: Chapter 183B of the General Laws, cited as the Real Estate Time-Share Act ("Act")^[1], sets forth the statutory provisions governing time-share interests, *i.e.*, time-share estates and time-share licenses, in Massachusetts. Under the Act both time-share estates and time-share licenses are considered interests in real property.

General Laws c. 183B, § 18, provides that a time-share interest may be evidenced and transferred by three types of instruments. A time-share estate is evidenced by either a time-share deed or a notice of time-share lease. A time-share license is evidenced by a notice of time-share license. Each of these three instruments is required to be recorded, pursuant to § 18, in the registry of deeds or land registration office for the district in which the time share property is located provided that the number of time-shares in the time-share property is greater than twelve.

Issue: Are transfers of time-share estates and time-share licenses subject to the deeds excise imposed under G.L. c. 64D, § 1 ("Excise")?

Directive: Transfers of time-share estates and time-share licenses are subject to the Excise, provided that the interest conveyed thereby is for a consideration in excess of one hundred dollars. The Excise is owed in such cases whether or not a time-share instrument is recorded in the registry of deeds or land registration office for the district in which the time-share property is located.

Discussion: Massachusetts General Laws chapter 64D, § 1, provides that there shall be levied, collected and paid an excise upon a "deed, instrument, or writing, whereby any lands, tenements or other realty sold shall be granted assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers ... when the consideration of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds one hundred dollars." Pursuant to § 1, "an excise is due upon any instrument or writing transferring an interest in real estate; the excise is not restricted to 'deeds.' Moreover, the excise is not limited to deeds, instruments, or writings that will be recorded." DOR Directive 95-5 ("DD 95-5").

Under the Act, a "time-share" is defined as "a time-share estate or a time-share license." G.L. c. 183B, § 2. Both time-share estates and time-share licenses are considered interests in real property under the Act.

As expressly stated in G.L. c. 183B, § 3, time-share estates constitute for all purposes a separate estate in real property. A "time-share estate" is defined as a "right to the occupancy of a unit or any of several units during five or more separated time periods over a period of at least five years, including extension or renewal options, coupled with a freehold estate or an estate for years in a time-share property or a specified portion thereof." G.L. c. 183B, § 2.

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The grant of a time-share estate in a unit conferring the right of possession during a “potentially infinite number” of separated time periods creates an estate in fee simple having the character and incidents of such an estate at common law. G.L. c. 183B, § 3. A grant of a time-share estate in a unit conferring the right of possession during five or more separated time periods over a finite number of years equal to five or more, including extension or renewal options, creates an estate for years having the character and incidents of such an estate at common law. *Id.*

A “time-share license” is defined under the Act as “a right to the occupancy of a unit or any of several units during five or more separated time periods not coupled with a freehold estate or an estate for years.” G.L. c. 183B, § 2. “Unit” for purposes of both time-share licenses and time-share estates, is defined as real property, or a portion thereof, designated for separate use. *Id.*

As interests in real property under the Act, both time-share estates and time-share licenses are subject to the Excise if transferred, provided that the interest conveyed thereby is for a consideration in excess of one hundred dollars. An Excise is owed in such cases whether or not a time-share instrument is recorded in the registry of deeds or land registration office for the district in which the time-share property is located. See Letter Ruling 90-1 (“LR 90-1”). (A transfer of stock, along with the appurtenant proprietary lease to a particular apartment, by a cooperative tenant/shareholder for a consideration in excess of one hundred dollars is subject to the deeds excise whether or not the proprietary lease is recorded.) See *also* DD 95-5. (Sales, transfers, and assignments of beneficial interests in nominee trusts that hold title to real estate for a consideration in excess of one hundred dollars are subject to the deeds excise whether or not the documents evidencing the assignment of beneficial interest are recorded.)

The fact that a time-share license does not create a freehold estate or an estate for years under the Act is not determinative of whether an Excise is owed. Under the Act, a time-share license is an interest in real property and, thus, is subject to the Excise if transferred, provided that the interest conveyed thereby is for a consideration in excess of one hundred dollars. Moreover, the Commissioner of Revenue has applied the Excise to other similar cases involving an interest in real property not coupled with a freehold estate or an estate for years. For example, see LR 90-1 and DD 95-5 discussed above.

/s/Amy Pitter
Amy Pitter
Commissioner of Revenue

AP:MTF:pls

October 13, 2011

DD 11-6

[1] Chapter 183B was added by St.1987, c. 760, §1. In § 1 of c. 183B, it is stated that “[t]his chapter may be cited as the Real Estate Time-Share Act.”